

**IN THE COURT OF APPEALS**  
**FIRST APPELLATE DISTRICT OF OHIO**  
**HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-080879
	:	TRIAL NO. B-0803296
Plaintiff-Appellee,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
ORESTES WHITIKER,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.<sup>1</sup>

Defendant-appellant, Orestes Whitiker, appeals the judgment of the Hamilton County Court of Common Pleas sentencing him to four years' imprisonment for robbery under R.C. 2911.02(A)(2), a felony of the second degree. He was convicted after entering a guilty plea.

In his first assignment of error, Whitiker now argues that the sentence was excessive. Under *State v. Foster*,<sup>2</sup> trial courts have full discretion to impose a sentence within the statutory range. A felony of the second degree carries a maximum sentence of eight years' imprisonment.<sup>3</sup>

In this case, the sentence was proper. Whitiker had punched the 81-year-old victim in the face and had threatened to shoot her while taking her purse. Although

---

<sup>1</sup> See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

<sup>2</sup> 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470.

<sup>3</sup> R.C. 2929.14(A)(2).

Whitiker argues that he had been suffering from mental and emotional problems at the time of the offense and that the court had discussed irrelevant matters during the sentencing hearing, the four-year sentence was not an abuse of discretion.

In his second and final assignment of error, Whitiker argues that he was denied the effective assistance of counsel. To establish ineffective assistance of counsel, the defendant must demonstrate that counsel's performance fell below an objective standard of reasonable performance and that prejudice arose from counsel's performance.<sup>4</sup> A defendant demonstrates prejudice by showing that, but for counsel's errors, there was a reasonable probability that the result of the proceeding would have been different.<sup>5</sup>

Whitiker first cites his attorney's statement at the sentencing hearing that it was "sort of hard to stand up here in mitigation on a case like this." In the context of the hearing, though, counsel was merely emphasizing that Whitiker appreciated the gravity of the offense. Counsel did in fact offer mitigating circumstances, and we find no prejudice to have arisen from the isolated statement.

Whitiker also argues that counsel was deficient in failing to seek a psychological evaluation for purposes of mitigation and in failing to seek treatment in lieu of prison. Again, we find no deficiency in counsel's performance. Both counsel and Whitiker himself informed the court of his alleged difficulties, and the court was therefore made aware that his mental health was an issue. As for treatment, Whitiker's attorney could have reasonably concluded that a treatment facility would not have been appropriate in light of the nature of the offense. We overrule the second assignment of error and affirm the judgment of the trial court.

---

<sup>4</sup> *Strickland v. Washington* (1984), 466 U.S. 668, 686, 104 S.Ct. 2052; *State v. Bradley* (1989), 42 Ohio St.3d 136, 538 N.E.2d 373, paragraphs two and three of the syllabus.

<sup>5</sup> *Strickland*, supra, at 694, 104 S.Ct. 2052.

Further, a certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

**HILDEBRANDT, P.J., CUNNINGHAM and WINKLER, JJ.**

RALPH WINKLER, retired, of the First Appellate District, sitting by assignment.

*To the Clerk:*

Enter upon the Journal of the Court on August 5, 2009  
per order of the Court \_\_\_\_\_.  
Presiding Judge